

# Appeals and Hearings

## I. GENERAL

### A. Purpose of Appeal Process

An appeal under TRICARE is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law or regulation. This chapter sets forth the policies and procedures for appealing decisions made by managed care support contractors (MCSCs hereafter referred to as the "contractor") and the National Quality Monitoring Contractor (NQMC) that adversely affect the rights and liabilities of beneficiaries and participating providers, and providers denied the status of an authorized provider under TRICARE.

### B. Appeal Process Authority and Contractor Responsibilities

#### 1. Authority

Title 32, Code of Federal Regulations (CFR), Part 199 authorizes the appeal process. It established the appeals and hearing process effective April 4, 1977. The procedures and principles included in this chapter are based on the requirements of 32 CFR 199.10. For additional information regarding the appeal process refer to OPM Part Two, Chapter 7, Section V., "[Provider Exclusions, Suspensions and Terminations under CHAMPUS](#)"; and the TRICARE/CHAMPUS Policy Manual, Chapter 11, Section 10.1, "[Appeal and Hearing Process](#)," and Chapter 13, Section 16.1, "[Waiver of Liability](#)." In addition, 32 CFR 199.15 incorporates by reference provisions of Title 42, CFR relating to Medicare. References to 42 CFR are included in this chapter where appropriate.

#### 2. Contractor Responsibilities

It is the responsibility of the contractor to ensure that the rights of appealing parties are protected at all levels of the appeal process in which the contractor participates. The contractor's responsibility begins with the initial determination and does not end until a final resolution is reached, including, where appropriate, timely payment following a reversal.

##### a. Initial Determinations

The contractor shall develop a written plan and implement a formal appeal process that incorporates the requirements for initial medical necessity and factual determinations set forth below. The contractor shall issue a dated initial determination in the form of an Explanation of Benefits (EOB) or a letter. The initial determination shall contain sufficient information to enable the beneficiary or provider to understand the basis for the denial. The initial determination shall state with specificity what services and supplies are being denied and for what reason. The contractor shall retain a legible hardcopy or microcopy of the initial determination or be able to produce a duplicate EOB from electronic records upon request. The initial determination shall include adequate notice of appeal rights and requirements. Suggested notices are at [Section I.B.2.a.\(3\)\(a\)](#) and [Section I.B.2.a.\(3\)\(b\)](#) below.

## (1) **Medical Necessity Initial Determinations**

The appeal process applicable to medical necessity initial denial determinations is addressed in [Section IV.](#) of this chapter. A flow chart diagramming the appeal process relating to medical necessity denials is at [Figure 3-7-A-6.](#)

## (2) **Factual Initial Determinations**

The appeal process applicable to factual initial denial determinations is addressed in [Section V.](#) of this chapter. A flow chart diagramming the appeal process relating to factual denials is at [Figure 3-7-A-7.](#)

## (3) **Written Notice of Initial Determination (Not EOB)**

**(a)** Suggested wording for a nonexpedited written appeal notice (including factual determinations):

“An appropriate appealing party (i.e., (1) the TRICARE beneficiary, (2) the non-network participating provider of care, or (3) a provider of care who has been denied approval under TRICARE or the appointed representative of an appropriate appealing party who is dissatisfied with the initial determination has the right to request a reconsideration. The request must be in writing, must be signed, and must be postmarked or received by (insert name of contractor, address, and fax number), within (90 calendar days) from the date of this decision and must include a copy of this decision. For purposes of TRICARE, a postmark is a cancellation mark issued by the United States Postal Service.”

“Additional documentation in support of the appeal may be submitted; however, because a request for reconsideration must be postmarked or received within 90 calendar days from the date of this decision, a request for a reconsideration should not be delayed pending the acquisition of additional documentation. If additional documentation is to be submitted at a later date, the letter requesting the reconsideration must include a statement that additional documentation will be submitted and the expected date of submission.”

“Upon receiving your request, all TRICARE claims related to the entire course of treatment will be reviewed.”

**(b)** Suggested modified wording for an appeal of a preadmission/preprocedure initial denial determination:

“A TRICARE beneficiary, or the appointed representative of the beneficiary, who is dissatisfied with the initial determination, may request an expedited reconsideration. The request must be in writing, must be signed, and must be received by (insert contractor name, address, and fax number) within three (3) calendar days after receipt of this denial determination, and must include a copy of this denial determination. A request for an expedited reconsideration which is received after the expedited reconsideration filing deadline will be addressed as a nonexpedited reconsideration. We recommend that you submit any additional documentation with the request for an expedited

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I.B.2.a.(3)(b)

reconsideration. Upon receiving your request, all TRICARE claims related to the entire course of treatment will be reviewed.”

**(c)** Suggested modified wording for an appeal of a concurrent review initial denial determination:

“A TRICARE beneficiary, who is an inpatient in the facility, or the appointed representative of the beneficiary who is dissatisfied with the initial determination, may request a reconsideration. The request must be in writing, must be signed, and must be received by (insert contractor name, address, and fax number). To ensure expedited processing of a request for reconsideration, the beneficiary must submit the request by noon of the day following the day of receipt of this denial determination; however, a request for reconsideration which is received after the reconsideration filing deadline, but which is postmarked or received within 90 days from the date of this denial determination, will be accepted. A request for reconsideration must include a copy of the denial determination. We recommend that you submit any additional documentation with the request for reconsideration. Upon receiving your request, all TRICARE claims related to the entire course of treatment will be reviewed.”

## **(4) Waiver of Liability**

If applicable, waiver of liability as it applies to the beneficiary and provider for services found not to be medically necessary, at an inappropriate level, custodial care, or other reasons relative to reasonableness, necessity or appropriateness of care, shall be addressed in the initial determination. Refer to [Section IV.D.](#) of this chapter for additional information relating to the applicability of waiver of liability.

## **(5) Undeliverable Initial Determinations**

If the notice of initial determination is returned as undeliverable, the contractor shall follow the procedures set forth in the [OPM Part Two, Chapter 1, Section VI.H.6.](#)

## **(6) Notice to Provider Seeking Authorized**

### **Provider Status**

When a provider has requested approval as a TRICARE provider, the contractor shall mail the initial notice of approval or disapproval to the last known address of the provider.

## **(7) Finality of Initial Determination**

The initial determination is final and binding unless the initial determination is reopened by the contractor or revised upon appeal.

## **C. Providing Assistance**

### **1. Assistance to Appealing Parties**

The contractor shall ensure that the rights of appealing parties are protected. In discharging this responsibility, the contractor shall:

- a. *Issue initial and reconsideration determinations which clearly explain appeal rights when an adverse decision is made.*
- b. *Explain to inquirers the procedures for requesting a reconsideration, a formal review or a hearing.*
- c. *Complete the file documentation when necessary, e.g., provide an EOB copy when an appeal is filed without a copy, or develop for additional information when the appealing party's statements indicate a need for added support or the file indicates added development is appropriate.*
- d. *When requested to do so, provide the appealing party a copy of the appeal file.*

## **2. Assistance to the TRICARE Management Activity (TMA)**

*When an appealing party files for a formal review or hearing with TMA, the contractor shall provide a complete file record to TMA on a timely basis. (See [Section VI.](#) of this chapter for requirements.)*

### **D. Reprocessing of Claims Following Issuance of Reconsideration Determinations, Formal Review Determinations and Hearing Final Decisions**

*TMA will provide the appropriate contractor with a copy of the formal review determination and hearing final decision. All contractor determinations reversed in whole or in part by the contractor's or the NQMC's reconsideration determination, the TMA formal review determination, or by a hearing final decision, shall be reprocessed by the contractor within twenty-one (21) days from the date of the contractor's reconsideration determination or receipt of the copy of the NQMC's reconsideration determination, the formal review determination or the hearing final decision. The contractor must return to the TMA Office of Appeals and Hearings, any formal review determination or hearing final decisions misdirected to the contractor.*

### **E. Quality of Contractor Reconsideration Cases**

*The contractor shall implement a process to ensure that ninety (90) percent of contractor reconsideration cases demonstrate accurate contractor processing of the appeal, consistent with the Operations Manual requirements and the documentation in the case file.*

### **F. Timeliness of Contractor Reconsideration Determinations**

*Timeliness of contractor reconsideration determinations is addressed in [Section IV.](#) and [V.](#) of this chapter.*